



> PerkinElmer Life and Analytical Sciences

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2-7-06 Final Offer

February 6, 2006

Arizona Department of Health Services  
Procurement  
1740 West Adams, Room 303  
Phoenix, AZ 85007

Attention: Philip Imatong

Subject: Solicitation SCC060011  
Consumable Laboratory Supplies and General Lab Equipment

Dear Mr. Imatong:

The following is in response to Solicitation Number SCC060011 from the State of Arizona. It is understood that the resultant contract will apply to all agencies within the State as well as qualifying political subdivisions.

With the mergence of the Analytical Instrument business and the Life Science business, the product lines offered by PerkinElmer LAS, Inc. are quite extensive. PerkinElmer would like to make an extensive product offering to the State. A January 2006 price list reflecting all PerkinElmer products being offered for contract coverage is attached. Please note that if our product base should change, PerkinElmer would like to extend automatic addition of instrumentation to the contract. This could be accomplished by PerkinElmer submitting a quarterly price list to the State. The following is a summary of current pricing being offered to the State under this solicitation:

#### PRICING

PerkinElmer will offer the State of Arizona a contract discount of 5% for all quantities of all products appearing on the enclosed price list. Except for those listed under our ESS Product line, any part numbers covering installation, extended warranties or training that might appear on the price list will **NOT** receive any discounts via the contract, but are being shown for the State's convenience. PerkinElmer cannot agree to fix pricing at this time. Price decreases will happen automatically in our internal pricing system.

PerkinElmer is pleased to offer qualifying members of the State use of our University Benefit Program. This program offers qualifying members two (2) distinct elements; an instrument purchasing discount and a consumables purchasing discount. Please note that all Program Discounts are available to all post-high school **degree-granting** institutions of higher learning and are to be applied against US List price in effect at the time of order placement. Details of each element are as follows:

#### **PerkinElmer LAS, Inc. University Benefit Program**

PerkinElmer LAS, Inc. has created this University Benefit Program to aid universities in training tomorrow's scientists and engineers on the most state-of-the-art equipment.

This Program is available to degree-granting Institutions of Higher Learning only.

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### Instrument Purchase Discount

Universities will receive up to the following discounts on instrument, major accessory and software purchases. The discount cannot be combined with other discounts except a Trade-In for Resale discount, assuming the discount is in accordance with the then current Trade-In for Resale Program.

### Discount schedule and eligible products

Schedule	University Discount %	Eligible Products
A	15	GC, LC*, IR, TEA, UVS unless specifically identified under a different schedule and AA Analyst 200 & 400.
B	13	ICP and MAS, unless specifically identified under a different schedule.
C	10	AA unless specifically identified under a different schedule and FTIR Spotlight.
D	10	AI Consumable Items, \$100.00 minimum.
E	10	AWS unless specifically identified under a different schedule.
F	10	MLD & RRD unless specifically identified under a different schedule.
G	10	LVI, FGP unless specifically identified under a different schedule and RRD Cyclone.
H	10	ANP, SPS unless specifically identified under a different schedule.

\* LC N298 preconfigured system packages will receive a 5% university benefit discount.

### Qualification to purchase instruments under the University Benefit Program

All post-high school degree granting institutions of higher learning may qualify for this Program. Affiliation with an institution is not sufficient to qualify, e.g., most hospitals have an affiliation with a medical school but the hospital does not grant the degree, the university does; hence the hospital is not eligible in this example. Customer must purchase products directly from PerkinElmer LAS, Inc.

The University discount or applicable promotional program discount, whichever is higher, will apply to the customers' order.

### Consumables Purchase Discount

Universities receive a **10%** discount on qualifying catalogue items consisting of Analytical Instrument consumables and selected minor accessories. The University consumable discount cannot be combined with other discounts except a Standing Order Discount.

### Additional Discounts that are additive to the Consumables Purchase Discount

#### Standing Order Discount

For single orders with multiple scheduled shipments, PerkinElmer offers an incremental 10% discount. Standing orders are orders placed with PerkinElmer on a single purchase order having a minimum of one shipment per calendar quarter with a minimum of two shipments per order. For example, you may place an order for four units of desiccant and have them delivered quarterly. Shipment dates can be revised without penalty, but there will be a 15% cancellation/restocking charge for any items that are cancelled or not shipped within one year from date of order. This program can only be combined with the 10% University consumables discount.

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### **Minimum Order**

There is a \$100 minimum order requirement for all orders not placed through PerkinElmer's Store Front Web channel. The Standing Order program is designed as an easy way for customers to place orders greater than \$100, to help our customers and PerkinElmer to reduce transaction costs.

### **Qualification to purchase consumables and selected minor accessories under the University Benefit Program:**

All post-high school degree-granting institutions of higher learning may qualify for this Program. Affiliation with an institution is not sufficient to qualify, e.g., most hospitals have an affiliation with a medical school but the hospital does not grant the degree, the university does; hence the hospital is not eligible in this example.

Products must be purchased directly from PerkinElmer LAS, Inc.

Also available to the State are special, short-term sales promotional programs. The Buyer will have the option of the discount as per the contract, educational benefit if applicable or special, short-term sales promotional program. Please note that discount Programs are mutually exclusive and not cumulative. Terms and conditions of the applicable program will prevail on an individual order.

PerkinElmer LAS, Inc. offers comments to certain State solicitation clauses and terms, conditions and instructions.

### ***SOLICITATION CLAUSES***

#### **IT 508 COMPLIANCE**

PerkinElmer represents that the Products offered hereunder do not meet the definition of Information Technology equipment described in the Federal Acquisition Regulations (FAR) 2.101, therefore, compliance with Section 508 regarding equivalent access is not applicable to this procurement.

### ***SPECIAL INSTRUCTIONS TO OFFERORS***

4) Descriptive Literature

This will be sent via US Mail within the next couple of weeks.

6) Purchasing Card

PerkinElmer will accept the State Purchasing card, but no discount can be applied.

9) Eligible Agencies

PerkinElmer will extend proposed pricing to eligible agencies provided they request this contract coverage at the time of order placement. Pricing and terms that will apply will be determined based on the pricing program extended on the order.

10) Attachments

Confirming our January 24, 2006 telephone conversation, the only page where PerkinElmer products are reflected is on page 54. That is the only page that will be submitted for consumable products, as this is the only page where PerkinElmer products currently appear. All other items being submitted appear on the attached price list. Page 111 is also being submitted to show pricing which we are offering on the subject solicitation.

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15) Warranty

PerkinElmer's Standard Commercial warranty appears on the attached page of Standard Terms and Conditions of sale.

20) Delivery

Consumables are typically shipped within 14 days. Instrumentation has varying lead times, but can usually be shipped within 90 days a/r/o. Specific information can be supplied at the time of a quote.

26) Maintenance Facilities

PerkinElmer no longer maintains a repair facility in Arizona, but we believe that our extensive Organization is prepared to handle all of your Service needs.

31) Demonstration Models

While demonstration instrumentation is available in the field, we cannot guarantee to be able to satisfy this requirement.

*SPECIAL TERMS AND CONDITIONS*

5) Contract Type

PerkinElmer cannot agree to fix pricing at this time.

6) Licenses

PerkinElmer shall maintain in current status all Federal, State and Local licenses and permits required for the operation of a business conducted by the contractor.

9) Product Discontinuation

PerkinElmer will update product coverage on a quarterly basis through the issuance of a new product listing.

15) Shipping -- FOB Destination

We agree to ship FOB destination with freight to be prepaid and added to invoice. Inside delivery is available for an additional fee.

17) Indemnification

PerkinElmer respectfully requests substitution of a more mutual clause. Please consider the following:

Indemnification: Each party agrees to protect, defend, and save its agents, officers, directors, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the indemnified party's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the other party's and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of either party, under this agreement.

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***UNIFORM TERMS AND CONDITIONS***

4.1 Payments

PerkinElmer will agree to net 30 payment terms.

4.2 Delivery

FOB destination is acceptable, but freight is to be prepaid and added to invoice.

6.2 Indemnification

See 17) above under special terms and conditions

7.2 Quality

See Warranty, item 15) under special instructions to offerors

***PRICE SHEET***

Confirming our conversation, PerkinElmer will not be completing this page. However, note that we have attached our current US List Price List.

***SOLICITATION LABORATORY PRICE SHEET #3***

This is the only Price Sheet where PerkinElmer will be bidding on consumables and only page 54 has been completed.

***QUESTIONNAIRE***

The questionnaire has been completed online.

***SCOPE OF WORK***

5b. Loaner Equipment

We do not supply loaner equipment.

5c. Installation

For most instrumentation, installation is included in the price. There are a few instances where installation is NOT included in the price of the instrument. Should the State request a quote on such an item, a charge for installation can be supplied.

5d. Manufacturer Warranty

PerkinElmer offers our standard commercial warranty. A copy is attached.

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5e. Maintenance Facilities

As previously noted, PerkinElmer does not maintain facilities in Arizona, but have a sufficient Service staff to handle the needs of the State.

5o. Product Return

PerkinElmer's return goods policy appears as clause #4 on the enclosed Terms and Conditions of Sale.

6. Additional Requirements at Contract Award

- a. PerkinElmer agrees to maintain required licenses and certifications, but copies cannot be provided.
- b. A certificate of insurance can be supplied to the State after award.

7. Reports and Deliverables

- a. Usage Reports: Upon request, a usage report can be supplied.
- b. MBE/WBE Usage:

The items that you are interested in purchasing are standard catalog items that are already manufactured or already in the process of being manufactured. These are not really custom manufactured items, nor is the contemplated contract a long term development effort fraught with subcontracting opportunities at this point in time. Indeed, delivery will be made within a relatively short time after receipt of your order. In view of the above, strict compliance with a clause regarding use of MBE/WBE is not practical for this procurement.

PerkinElmer LAS, Inc. has a long standing commitment to the utilization of small/minority/disadvantaged/women-owned businesses as evidenced by our execution of a Small/Minority Business Subcontracting Plan for our U.S. Government Federal Supply Schedule Contracts, and our naming a Small/Minority Business Liaison Officer, Mr. Paul Berry, to assure compliance to the Plan. During the period July 1, 2005 through December 31, 2005, PerkinElmer LAS, Inc. subcontracted \$96,215,940.00 as follows:

	<u>Percent</u>	<u>Dollars</u>
Small Business (SB)	48.6	\$ 46,752,259
Small Disadvantaged Business (SDB)	0.8	\$ 778,415
HUBZone SBC	0.5	\$ 499,308
Women-Owned Small Business (WO)	2.7	\$ 2,552,089
Small Veteran Owned	0.1	\$ 137,193
Small Disabled Veteran Owned	.0	\$ 0

The principal products and services that the Corporation anticipates purchasing are parts, sub-assemblies, materials and services specifically used in the assembly and test of Analytical Instruments and Chemical Reagents made by the company at its domestic locations.

In summary, we believe that we are in compliance with the intent of the law; namely to foster growth of small/minority/disadvantaged/women-owned businesses. Toward that end we are accomplishing our task. PerkinElmer LAS, Inc. asks that you give us favorable consideration regarding our response to the subject RFP

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8. Invoices

Invoices are automatically generated and mailed at the time of product shipment. PerkinElmer is currently working on the ability to systematically generate summary invoices, but currently this would be a manual process. Until such time that an automated process becomes available, we would be unable to provide the State with summary invoices.

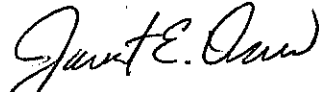
In closing, PerkinElmer LAS, Inc. has enjoyed a long, mutually beneficial relationship with the State of Arizona, and we hope that we will hear from you soon with news of our new award.

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If I can be of any assistance to you, please feel free to contact me at (800) 762-4000, extension 2515 or at (203) 944-2515.

Very truly yours,

PerkinElmer LAS, Inc.



Janet E. Drew  
Senior Contracts Administrator

# CONSUMABLE LABORATORY SUPPLIES AND GENERAL LAB EQUIPMENT

Solicitation # SCC060011

## Offer

TO THE STATE OF ARIZONA

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer. Signature also certifies Small Business status.

### Tax Information

Arizona Transaction (Sales) Privilege Tax License No. 07 547150-Z  
Federal Employer Identification No. 04-3361624

### Location Information

Company Name: PerkinElmer LAS, INC.  
Address: 710 Bridgeport Avenue  
Shelton, CT 06484

### Clarification Information

Name: Janet Drew  
Phone: (203) 944-2515 Fax: (203) 944-4982

### Signature

Name: Judith Albrecht Date: 2-8-06

Title: Business Team Mgr.

Signature:

### Certification

By Accepting below, the bidder certifies:

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The bidder shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 75.5 or A.R.S. §§ 41-1461 through 1465
3. The bidder has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The bidder certifies that the above referenced organization isxx is not a small business with less than 100 employees or has gross revenues of \$4 million or less.

## Acceptance

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the State.

This contract shall henceforth be referred to as Contract No. \_\_\_\_\_. The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document or written notice to proceed.

State of Arizona Awarded This \_\_\_\_\_ day of \_\_\_\_\_  
Procurement Officer: \_\_\_\_\_

"Bid in accordance with PerkinElmer LAS, Inc. terms and conditions attached. Additional clarification on pricing structures offered appear in cover letter dated 2-6-06. Attached price list is enclosed to show current products being offered for contract coverage and is not an offer to fix prices." Price offered is US List in effect at the time of an order or pricing available through one of PerkinElmer's pricing programs.



# SOLICITATION # SCC060011- LABORATORY PRICE SHEET #3

	DESCRIPTION / SUBSTITUTE NAMED OR ACCEPTABLE EQUIVALENT	QTY	UOM	EQUIVALENT CATALOG #	MANUFACTURER NAME	UNIT PRICE	EXTENDED PRICE
887	9MM THERMOLITE SEPTA RESTEK PART #20358 OR RESTEK BRAND ACCEPTABLE	4	PACKS				\$0.00
889	11MM THERMOLITE SEPTA RESTEK PART #20364 OR RESTEK BRAND ACCEPTABLE	4	PACKS				\$0.00
890	TRX-BAC1 BLOOD ALCOHOL COLUMN RESTEK PART #18003 OR RESTEK BRAND ACCEPTABLE	1	EACH				\$0.00
891	TRX-BAC2 BLOOD ALCOHOL COLUMN RESTEK PART #18002 OR RESTEK BRAND ACCEPTABLE	1	EACH				\$0.00
892	MICROLAB SERIES 500 HAMILTON PART #35896 OR RESTEK BRAND ACCEPTABLE	1	EACH				\$0.00
893	GRAPHITE FERRULES VARIAN PART #392611909 OR VARIAN BRAND ACCEPTABLE	1	PACK				\$0.00
894	1 ML SYRINGE VARIAN PART #03-925902-01 OR VARIAN BRAND ACCEPTABLE	1	EACH				\$0.00
895	VITON O-RINGS COMBIPAL PART #88-501-031-00 OR COMBIPAL BRAND ACCEPTABLE	1	PACK				\$0.00
896	VIALS (1000 COUNT) PERKIN ELMER PART #B0104236 OR PERKIN ELMER BRAND ACCEPTABLE	10	CASES		PerkinElmer	290.00	\$0.00
897	SEPTA (1000 PACK) PERKIN ELMER PART #B0104240 OR PERKIN ELMER BRAND ACCEPTABLE	10	PACKS		PerkinElmer	481.00	\$0.00
898	JET NEEDLE PERKIN ELMER PART #B4000011 OR PERKIN ELMER BRAND ACCEPTABLE	1	EACH		PerkinElmer	429.00	\$0.00
899	WIDE BORE STAINLESS STEEL NEEDLE PERKIN ELMER PART #B0131385 OR PERKIN ELMER BRAND ACCEPTABLE	1	EACH		PerkinElmer	210.00	\$0.00
900	UNIVERSAL Y-SPLITTER PERKIN ELMER PART #9303448 OR PERKIN ELMER BRAND ACCEPTABLE	1	EACH		PerkinElmer	75.00	\$0.00
901	SEALS PERKIN ELMER PART #B0198110 OR PERKIN ELMER BRAND ACCEPTABLE	5	EACH		PerkinElmer	33.00	\$0.00

Price listed is per unit. Price will be US List price in effect at the time of an order. No price extension applies.

# SOLICITATION # SCC060011- LABORATORY PRICE SHEET #4

DESCRIPTION / SUBSTITUTE NAMED OR ACCEPTABLE EQUIVALENT	QTY	UOM	EQUIVALENT CATALOG #	MANUFACTURER NAME	UNIT PRICE	EXTENDED PRICE
CATEGORIES: ALL						
EQUIPMENT 5%						
ADDITIONAL CATEGORIES (Please List)						
	%					
	%					
	%					
	%					
DELIVERY SHALL BE MADE WITHIN TEN (10) CALENDAR DAYS OR LESS AFTER RECEIPT OF ORDER ON GENERAL ITEMS LISTED ABOVE - EXCLUDING CAPITAL EQUIPMENT ITEMS						
CAN DELIVERY STATED BE MET BY YOUR COMPANY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>						
IF NOT, STATE DELIVERY IN CALENDAR DAYS 14+ days						
IF PAYMENT IS MADE WITH CALENDAR DAYS AFTER ACCEPTANCE OF GOODS AND /OR SERVICES,						
THE ABOVE QUOTED PRICE, EXCLUDING SALES TAX, SHALL BE DISCOUNTED BY %						

AS DETAILED IN OUR COVER LETTER ATTACHED, PERKINELMER IS OFFERING A DISCOUNT OF 5% FOR ALL QUANTITIES OF ALL PRODUCTS ON THE ENCLOSED PRICE LIST. PRICE WILL BE US LIST PRICE IN EFFECT AT THE TIME OF THE ORDER. PLEASE REFER TO COVER LETTER FOR COMPLETE DETAILS OF OUR OFFERING.

**QUESTIONNAIRE ATTACHMENT**  
**SOLICITATION NO: SCC060011**

**DELIVERY**

DELIVERY SHALL BE MADE WITHIN TEN (10) CALENDAR DAYS OR LESS AFTER RECEIPT OF ORDER ON GENERAL ITEMS LISTED ABOVE – EXCLUDING CAPITAL EQUIPMENT ITEMS

CONSUMABLES ARE TYPICALLY SHIPPED WITHIN 14 DAYS A/R/O. EQUIPMENT LEAD TIME WILL BE

- I. Can your company accomplish delivery stated above? \_\_\_\_\_ YES ☒ NO. QUOTED.

If not, State delivery in calendar days. \_\_\_\_\_ Delivery in calendar days upon receipt of order.

II. EARLY PAYMENT DISCOUNTS;

If payment is made within 30 calendar day after acceptance of goods and or services,

The above quoted price, excluding sales taxes, shall be discounted an extra percent of 0 %

**MBE/WBE/SMALL BUSINESS CERTIFICATION**

III. PLEASE CHECK AS MANY AS APPLICABLE:

\_\_\_\_ I certify that my company is a Woman-Owned Business Enterprise (WBE).  
A WBE is defined as an enterprise where a woman owns at least fifty-one percent (51%) of the business. The owner(s) must have the day-to-day control of the firm and have experience and expertise in the firm's primary area of operation. The owner(s) must hold a proportionate share of the business capital, assets, profits and losses commensurate with their ownership interest.

\_\_\_\_ I certify that my company is a Minority-Owned Business Enterprise (MBE).  
An MBE is defined as an enterprise where an ethnic minority owns at least fifty-one percent (51%) of the business. The owner(s) must have the day-to-day control of the firm and have experience and expertise in the firm's primary area of operation. The owner(s) must hold a proportionate share of the business capital, assets, profits and losses commensurate with their ownership interest.

\_\_\_\_ I certify that my company is a Small Business.  
A Small Business is defined as a company having fewer than one hundred (100) employees or less than four million dollars (\$4,000,000) in gross receipts.

**QUESTIONNAIRE ATTACHMENT**  
**SOLICITATION NO: SCC060011**

**PURCHASING CARD CAPABILITIES**

**IV: PROCUREMENT (P-CARD) CAPABILITIES;**

Does your company have the capabilities to use the State of Arizona Procurement (P-Card) Program?

☒ YES ☐ NO

If additional discounts (percent % off of net pricing bid) are being offered to the State of Arizona for using this Program, please specify such discount percent(s) % in the appropriate area below:

0 percent (s) % off as an additional discount for using the Procurement Card Program (P-Card)

**RETURN POLICY**

**V: RETURN POLICY:**

Does your company have a return policy?

☒ YES ☐ NO

If Yes, please provide a written description of the policy. SEE ATTACHED TERMS AND CONDITIONS

**SUBCONTRACTORS**

**VI. SUBCONTRACTORS:**

Does your company plan to use subcontractors to fulfill this contract?

☐ YES ☒ NO

If Yes, please provide a list

**TELEPHONE ORDERING SUPPORT/CUSTOMER SERVICE**

**VII. TELEPHONE ORDERING SUPPORT/CUSTOMER SERVICE:**

Does your company provide customer service to fulfill the service provided?

☒ YES ☐ NO

If Yes, please provide a written description of the customer service process and policy

QUESTIONNAIRE ATTACHMENT  
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**WEB BASED ORDERING CAPABILITIES**

VIII. WEB BASED ORDERING CAPABILITIES:

Does your company provide web based ordering capabilities to fulfill the service provided?

☒ YES ☐ NO

If Yes, provide a written description of the web based ordering process and policy

**COLLECT CALLS/TOLL-FREE NUMBER**

~~IX. COLLECT CALL/TOLL-FREE CAPABILITIES:~~

Does your company accept collect telephone calls or provide a toll-free number?

☒ YES ☐ NO (800) 762-4000

If Yes, provide the toll-free number.

**MAINTENANCE FACILITIES**

X. MAINTENANCE FACILITIES

List the locations of your maintenance facilities. N/A

**WARRANTY**

XI. WARRANTY

Provide the conditions, limitations and duration of any warranty offered.

SEE ATTACHED TERMS AND CONDITIONS OF SALE.

## REFERENCES

Please note that this is PerkinElmer LAS, Inc. Confidential Information

Dan Perez  
602-542-6117  
1520 West Adams  
Phoenix, AZ

City of Phoenix Police Department

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Anil Solanky  
602-262-6197  
620 West Washington  
Phoenix, AZ 85003

Arizona Western College  
Scott Donnelly  
928-344-7590  
9500 South Ave.8 E  
Yuma, AZ 85366

**PERKINELMER LAS, INC.**  
**STANDARD TERMS AND CONDITIONS OF SALE**

**1. Delivery Dates and Prices**

- a) All delivery and shipment dates indicated on the face hereof are approximate and subject to Seller's availability schedule. Seller will make reasonable efforts to meet the delivery date(s) quoted. However, Seller will not be liable for its failure to meet the quoted delivery dates or for any delay in performance hereunder due to unforeseen circumstances or shortages, due to causes beyond its control, or due to its voluntary or mandatory compliance with any governmental act, regulation, or request. If, by reason of such circumstances, Seller's supplies of the equipment or service (hereinafter the "Product(s)") covered hereby are limited, Seller shall have the right to allocate the available supply among its customers in such manner as it, in its sole discretion, determines appropriate.
- ~~b) All orders are priced on the basis of an estimated shipment date within ninety (90) days of the date of order to the stated destination. Should Buyer request a change in the estimated shipment date or otherwise cause delay in delivery beyond ninety (90) days from the date of order or request that the Products be shipped outside the country of original delivery, the prices established by this quote shall no longer apply, and Seller's list prices in effect on the actual date of shipment shall be used in determining the price to be paid. Except as provided above, if the price is stated by reference to a published price list, then the price shall be the price on the published price list in effect at the time Seller receives Buyer's purchase order, without regard to the requested delivery date. However, if any Product is ordered prior to the effective date of a published price change and the delivery date is rescheduled, the price in effect at the time of the initial delivery date shall apply.~~
- c) If Buyer requests shipment to a country other than the country originally requested, and if Seller elects not to cancel the order pursuant to Paragraph 12 hereof, Seller's applicable surcharge for the actual country of delivery shall be added to the price.
- d) Notwithstanding any provision to the contrary herein, all prices are subject to increase without notice to reflect changes in: (1) Federal or State laws taxing raw material or processed materials; (2) applicable laws or regulations governing working hours or compensation of labor; and/or (3) freight charges, insurance costs, duty or other factors affecting costs of shipment.

- 2. **Packing and Loss or Damage in Transit.** Products will be packed for shipment in a manner suitable to the method of shipment specified by Buyer, or to the method selected by Seller in the absence of instructions. Unless otherwise indicated on the face hereof, all sales hereunder are f.o.b. shipping point, and all risk of loss or damage to equipment in transit is upon Buyer. Payment will be made in accordance with Paragraph 5 below.
- 3. **Payment Due For Partial Deliveries.** Seller may, in its sole discretion, deliver any portion of the Products ordered, regardless of utility to Buyer in the absence of the undelivered portion, and all such partial deliveries shall be accepted and paid for in accordance with the terms of Paragraphs 4 and 5 below. Likewise, completion of any installation services shall not be a condition to Buyer's obligation to remit payment. The making of a partial delivery that, to any extent, is not in accordance with the contract of sale shall not affect the Buyer's obligation hereunder to remit payment.
- 4. **Inspection, Acceptance and Return of Products or Trade-Ins.** Buyer shall inspect the Products immediately upon receipt and shall, within five (5) business days after receipt, give written notice to Seller of any claim for shortage or that the Products do not conform with the terms of the contract of sale. If Buyer shall fail to give such notice, the Products shall be deemed accepted and to conform with the terms of the contract of sale, and Buyer shall be bound to pay for the Products in accordance with the terms of Paragraph 5 below. Return of Products, defective or otherwise, will not be accepted by Seller without (i) written notification from Buyer to Seller within 30 days of receipt of invoice and (ii)

receipt of a return authorization number from Seller. Products authorized to be returned shall be shipped f.o.b. destination, freight pre-paid. When return of nonconforming goods has been accepted by Seller, conforming shipment may be made in accordance with Paragraph 1 above and Paragraph 8 below without further liability on Seller's part. Buyer will be liable for restocking charges in the event Products are returned to the Seller which are not defective and are in accordance with these terms. When a trade-in is authorized by Seller, Buyer shall ship, f.o.b. destination, freight pre-paid, the material or equipment so authorized for trade-in, to Seller's specified location.

5. **Payment and Credit Terms.** Unless otherwise indicated on the face hereof, Buyer agrees to remit payment in full to the address provided on the face of Seller's invoice for all shipments, including shipments of any portion of the Products ordered, upon receipt of invoice. This obligation shall not be contingent upon the completion of any installation services included in the purchase price. No cash discounts will be granted. Account balances not paid in accordance with these terms are subject to the maximum prevailing legal interest rate calculated from date of delinquency. In the event Seller finds it necessary to refer an account to an attorney or an agent for collection of delinquent accounts, ~~Buyer shall pay all costs of collection including, without limitation, reasonable attorneys' fees.~~ Buyer agrees that Seller shall retain a security interest in the Products sold hereunder to secure any portion of the price not paid on delivery and will, on request, execute a security agreement in such form as is required by Seller, which, at Seller's option, may be filed with appropriate local, state, or other relevant authorities. Should Buyer become delinquent in the payment of any sum due hereunder, or if Buyer becomes insolvent, or if any proceedings are commenced under any bankruptcy or similar laws for Buyer's reorganization or other debt adjustment, Seller will not be obligated to continue performance. Seller reserves the right to change the credit terms provided herein when, in Seller's opinion, the financial condition or previous payment record of Buyer so warrants. If, within thirty (30) days of receipt of written notice of such change, Buyer fails to agree and comply with different terms of credit, and/or fails to give adequate assurance of due performance, Seller may (a) by notice to Buyer, treat such failure or refusal as a repudiation by Buyer of the portion of the purchase order not then fully performed, whereupon Seller may cancel all further deliveries and any amounts unpaid hereunder shall immediately become due and payable; or (b) make shipments under reservation of a demand for advance payment or payment against tender of documents of title. Buyer's acceptance of delivery of any Products shall constitute a representation that Buyer is solvent.
6. **Taxes.** Buyer is responsible for the ultimate payment of all taxes which may be assessed or levied on or on account of Products sold hereunder to Buyer, whether termed a gross receipts tax, use tax, property tax, sales tax or otherwise. Where Buyer claims that a transaction is not subject to any such tax, that Buyer is exempt, or that Seller is not required to collect such tax, Buyer agrees to provide Seller with any documentation necessary to support such a claim, to allow Seller to document its decision not to collect such tax(es), and to indemnify and hold Seller harmless from and against any and all fines, penalties, interest, taxes, and other expenses, including, without limitation, reasonable attorney's fees, incurred by Seller as a result of reliance upon Buyer's position.
7. **Installation and Site Preparation.** Installation services are included in the purchase price of the Products sold hereunder only if expressly so stated on the face of Seller's quotation or in Seller's applicable price list. Installation services for Products transferred outside the country of original delivery by Buyer's actions may be subject to additional charges based on the actual installation site location. For Products requiring installation by Seller's service personnel, it is the responsibility of Buyer to prepare the site environmentally and provide the required services, power, water, drain, air, bottled gases, permits, licenses, approvals, etc., as well as whatever is required to uncrate and transport the Product to its appropriate location for use. Failure to do so, prior to Seller's service personnel arriving at Buyer's site on the mutually agreed upon installation date, will result in a service charge by Seller to cover the lost time of its service personnel. Should Seller be unable to perform the required installation services within twelve months of a Product's shipment date as a result of Buyer's inability to prepare the site as required, Buyer may be responsible for additional costs associated with required hardware, software and firmware updates. Because Seller's service personnel may be required to enter upon Buyer's premises for the purpose of providing service to the Products sold hereunder, Buyer hereby undertakes to maintain its premises in a safe condition and to



comply with all applicable laws, statutes and regulations governing workplace health and safety, and hereby accepts full responsibility for any harm or injury to, or liability arising from work performed by, Seller's personnel while on Buyer's premises, except to the extent caused solely by the gross negligence or willful misconduct of Seller's personnel. Seller's sales and service personnel are not authorized to enter into any indemnity or hold harmless agreements on behalf of Seller.

## 8. Limited Warranty.

### a) Warranty.

- i) Seller warrants to Buyer that the Products sold to Buyer are, at the time of shipment to Buyer from Seller, free from defects in materials and workmanship.
- ii) This warranty shall be valid for a period of 90 days from the date of shipment to Buyer, unless a different period is specified herein, or in Seller's applicable price list in which case such specified period shall apply. Notwithstanding anything to the contrary contained herein, the warranty period for data processing equipment, including data storage devices, processors, printers, terminals, communication interfaces, tape drives and all similar devices, is in all cases limited to ninety (90) days from the date of shipment to Buyer.
- iii) Except in the case of an authorized distributor of Seller, authorized in writing by Seller to extend this warranty to distributor's customers, the warranty herein applies only to Buyer as the original purchaser from Seller and may not be assigned, sold or otherwise transferred to any third party.
- iv) As Buyer's sole and exclusive remedy under this warranty, Seller agrees either to repair or replace, at Seller's sole option, any part or parts of such Products which, under proper and normal conditions of use, prove(s) to be defective within the applicable warranty period. Alternatively, Seller may at any time, in its sole discretion, elect to discharge its warranty obligation hereunder by accepting the return of any defective Product pursuant to the terms set forth herein and refunding the purchase price paid by Buyer.

### b) Exclusions and Limitations.

- i) It is recognized that some parts by their nature may not function for the warranty period applicable to the Product. Therefore, expressly excluded from the warranty herein are chromatography columns, filaments, energy sources, lamps, power amplifier tubes, graphite tubes, sample cell holders, burner and furnace chambers, nebulizers, and other similar parts referenced in the Product's applicable operating manual.
- ii) The warranty herein excludes any equipment or accessories which are identified on applicable price lists, quotations, special promotional materials, or on the face hereof, for which this limited warranty may be further limited. Included within this category are items produced by third party manufacturers (as to which Seller passes to Buyer the warranty it has been provided by the manufacturer) and items which are sold at specially reduced prices with reduced warranty protection (in some cases, extended warranty protection may be available at an increased price).
- iii) This warranty does not cover loss, damage, or defects resulting from: transportation to the Buyer's facility, improper or inadequate maintenance by Buyer, Buyer-supplied software or interfacing, unauthorized modification or misuse, operation outside of the environmental specifications for the Product or improper site preparation or maintenance.
- iv) No warranty is made with respect to used, reconstructed, refurbished or previously owned Products, which will be so marked on the face hereof and, unless otherwise indicated on the face hereof, shall be sold "As Is".
- v) The warranty herein applies only to Products within the country of original delivery. Products transferred outside the country of original delivery, either by Seller at the direction of Buyer or by Buyer's actions subsequent to delivery, may be subject to additional charges prior to warranty repair or replacement of such Products based on the actual location of such Products and Seller's warranty and/or service surcharges for such location(s).

- c) Place of Service. Except when otherwise provided in Seller's current applicable price list, Seller shall use reasonable efforts to perform all warranty services hereunder at Buyer's facility, as soon as reasonably practicable after notification by Buyer of a possible defect; provided, however, that Seller reserves the right to require that Buyer return the Product to Seller's production facility, transportation charges prepaid, when necessary to provide proper warranty service.
- d) Software and Firmware Products. The sole and exclusive warranty applicable to software and firmware products provided by Seller for use with a processor is as follows: Seller warrants that such software and firmware will conform to Seller's program manuals current at the time of shipment to Buyer when properly installed on the processor, provided, however, that Seller does not warrant that the operation of the processor or software or firmware will be uninterrupted or error-free.

SELLER MAKES NO OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **9. Exclusive Remedies.**

THE REMEDIES PROVIDED HEREIN ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES. SELLER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, ARISING OUT OF THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSTALLATION, SERVICE OR USE OF THE PRODUCTS. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSTALLATION, SERVICE OR USE OF THE PRODUCTS.

#### **10. Patent Indemnity.**

Seller agrees to defend, at its own expense, any suit or legal proceeding which may be brought against Buyer alleging infringement by Buyer of any patent of the United States, as a result of Buyer's use of the Product sold hereunder for its intended purposes, provided that Buyer shall give Seller prompt written notice of any claim, threat, or institution of any such suit or legal proceeding, and provided further that Seller shall then have the sole right to control and conduct the defense and/or settlement of such claim, threat, suit or legal proceeding, either in the name of Seller or Buyer or both, and Buyer shall, at Seller's request and expense, provide relevant information and reasonable cooperation. Seller shall pay all final judgments and all costs and attorney's fees assessed against Buyer in any such suit or legal proceeding, provided Buyer has complied with the conditions hereof with respect to prompt notice and cooperation in connection with such suit or legal proceeding and given exclusive control thereof to Seller.

Notwithstanding the foregoing, Seller shall not be liable for any attorney's fees or other legal expenses incurred by Buyer without the knowledge and prior written consent of Seller. Seller shall have the right, at its own expense, to procure for Buyer the right to continue using the Product claimed to infringe, replace said Product with an equally satisfactory non-infringing Product, modify said Product so that it becomes non-infringing, or remove such Product and refund the purchase price thereof less a reasonable amount for use, damage or obsolescence.

The foregoing indemnity fully defines Seller's obligation for patent infringement. Such obligations shall specifically not apply to:

- a) an infringement claim resulting from additions or changes in or to the Product made by Buyer or any third party or from use in combination with other equipment; or
- b) an infringement claim which is settled without the prior written consent of Seller; or
- c) an infringement claim which results from compliance by Seller with specifications furnished by Buyer.

The total amount of Seller's obligation and liability under this Section shall not exceed the price paid by Buyer to Seller for the Product held to infringe, and in no event will Seller be held accountable for consequential damages under this indemnity, such as loss of business profits or goodwill. With respect to any infringement claim arising from Product manufactured in whole or in part to Buyer's specifications or from use of such Product in conjunction with any other goods, Buyer will indemnify and hold harmless Seller from and against all such claims for damages or profits arising from infringement of patents, designs, copyrights or trademarks.

#### **11. Modification of Terms.**

BUYER'S ACCEPTANCE OF ANY QUOTATION IS EXPRESSLY SUBJECT TO BUYER'S ASSENT TO EACH AND ALL OF THE TERMS AND CONDITIONS SET FORTH IN SELLER'S QUOTATION, AND BUYER'S ASSENT TO THESE TERMS AND CONDITIONS OF SALE SHALL BE CONCLUSIVELY PRESUMED FROM BUYER'S SUBMISSION OF ITS PURCHASE ORDER. NO ADDITION TO OR MODIFICATION OF SAID TERMS AND CONDITIONS SHALL BE BINDING UPON SELLER UNLESS SPECIFICALLY AGREED TO BY SELLER IN WRITING. IF BUYER'S PURCHASE ORDER OR OTHER CORRESPONDENCE CONTAINS TERMS OR CONDITIONS CONTRARY TO OR IN ADDITION TO THE TERMS AND CONDITIONS CONTAINED HEREIN OR IN SELLER'S QUOTATION, ACCEPTANCE OF ANY ORDER BY SELLER SHALL NOT BE CONSTRUED AS ASSENT TO SUCH CONTRARY OR ADDITIONAL TERMS AND CONDITIONS OR CONSTITUTE A WAIVER BY SELLER OF ANY OF THE TERMS AND CONDITIONS CONTAINED HEREIN OR IN SELLER'S QUOTATION. SELLER'S ACCEPTANCE OF BUYER'S PURCHASE ORDER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS. NO MODIFICATION OR WAIVER OF THESE TERMS AND CONDITIONS IS VALID, UNLESS CONFIRMED IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SELLER.

#### **12. Authority to Export.**

ALL ORDERS ACCEPTED FOR EXPORT (AND/OR RE-EXPORT) ARE SUBJECT TO: 1) UNITED STATES GOVERNMENT EXPORT REGULATIONS; AND 2) BUYER PROVIDING SELLER WITH ALL DOCUMENTATION NECESSARY FOR SHIPMENT TO THE DESTINATION COUNTRY.

#### **13. Software Licenses and Copyrighted Material.**

- a) Seller provides software products by license only. The terms of the license are available from Seller and are deemed accepted by Buyer on delivery of licensed software.
- b) Unless otherwise specified, Seller's copyrighted material (software, firmware, and printed documentation) may not be copied except for archive purposes, to replace a defective copy, or for program error verification by Buyer.

#### **14. Miscellaneous.**

- a) **Excusable Delays.** Seller shall not be liable for delays in delivery or failure to manufacture or deliver goods due to acts of God, acts or failures to act of Buyer, acts of civil military authority, fires, strikes, floods, epidemics, attack, war, delays in transportation or other causes beyond Seller's reasonable control, including, without limitation, delays in obtaining or inability to obtain necessary labor, materials, components, or manufacturing facilities.
- b) **Governing Law.** The contract of sale shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, U.S.A. without regard to its principles of conflict of laws. Any disputes relating to the contract of sale between Buyer and Seller shall be adjudicated in the state or federal courts in the Commonwealth of Massachusetts, U.S.A., and both parties hereby consent to the exclusive jurisdiction of said courts for purposes of any such litigation. The parties expressly agree to waive application of the United Nations Convention on Contracts for the International Sale of Goods.

- c) Confidential Data and Information. If, in connection with the sale, purchase, use, or maintenance of the Products, Seller is requested, required, or deems it advisable to furnish data or information which it, in its sole discretion, deems proprietary, confidential, or both, Seller shall not, in any event, submit or be required to furnish such data or information unless Buyer enters into an agreement concerning the handling, use, copying, retention and return of such information, the form of which agreement is available to Buyer on request. Seller does not agree to accept any proprietary or confidential information of Buyer in the absence of such a written agreement signed by an authorized representative of Seller.
  - d) Assignment. Buyer may not assign, transfer or delegate any of its rights or obligations herein without the prior written consent of Seller, and any purported assignment of such rights or obligations without such consent shall be null and void.
  - e) Severability. If any provision herein is deemed unenforceable by a court of competent jurisdiction, the other provisions shall remain in full force and effect as if the unenforceable provision had not been included.
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